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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Ninth session

SUMMARY RECORD OF THE 44th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 7 December 1993, at 3 p.m.

Chairperson: Mr. MUTERAHEJURU

later: Mr. ALSTON

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The meeting was called to order at 3.20 p.m.

ORGANIZATION OF WORK (agenda item 2)

Meetings of the Pre-Sessional Working Group

1. The CHAIRPERSON informed the members of the Committee that its tenth and eleventh sessions would be held from 2 to 20 May 1994 and 21 November to 9 December 1994, respectively. The Pre-Sessional Working Group would meet from 27 June to 1 July 1994 and 12 to 16 December 1994.

2. Mr. SIMMA said that if the meetings of the Working Group were to be held just before or after the Committee's meetings, that would represent a saving for the United Nations.

3. Mrs. IDER said she was of the same opinion as Mr. Simma and added that the efficiency of the experts would be increased by such a step.

4. Mr. SIMMA added that it would, however, be difficult for him, from a professional point of view, to remain in Geneva for four consecutive weeks.

5. Mrs. JIMENEZ BUTRAGUEÑO said that savings should be made when times were hard and that only compelling reasons could justify separating the sessions of the Working Group and of the Committee.

6. Mr. ALVAREZ VITA asked the Secretariat if there would be a room available for the Pre-Sessional Working Group as from 23 May 1994.

7. Mr. TIKHONOV (Secretariat) stated that the Conference Service had already approved the timetable of meetings for 1994 but that it should be possible to reschedule the meeting of the Working Group which had initially been planned for 27 June 1994.

8. Mr. ALVAREZ VITA said he believed that it would be difficult for most of the experts to remain in Geneva for four consecutive weeks.

9. Mr. GRISSA remarked that he would prefer the Working Group to meet just before the Committee's session rather than just after. In that way he could give the Committee a brief report on its work. He also thought he would be unable to spend four consecutive weeks in Geneva.

10. Mr. SIMMA said that even after the Committee stopped holding an additional session in December, the Pre-Sessional Working Group could continue to meet just before the Committee's May session. States parties would then have ample time to reply to the questions in the lists of issues.

11. Mr. WIMER ZAMBRANO said that he, too, thought that four weeks would be too long for most members of the Committee. He also believed that the Pre-Sessional Working Group should meet just before the Committee's session.

12. Mr. GRISSA suggested that subgroups should be established during the Committee's session and that they should each be given responsibility for preparing the list of issues for a given country. In that way, the Pre-Sessional Working Group would no longer have to meet.

13. Mr. Alston took the Chair.

14. The CHAIRPERSON asked the members of the Committee to forgive him for interrupting the debate in order to report on the meeting he, Mrs. Bonoan-Dandan and Mr. Badawi had just held with Mr. Fall, the Assistant Secretary-General for Human Rights. After restating his deep commitment to the work of the Committee, Mr. Fall had said that the Centre for Human Rights' request to New York for additional resources had, unfortunately, not been favourably received. Mr. Fall had, however, assured the Committee's delegation that he would, in the near future, try to strengthen the services provided by the Centre for Human Rights to the Committee, but he had not gone into detail.

15. The Committee was therefore once again forced to note that the Secretariat was not providing the assistance it needed. That remark should be directed not only to the financial service in New York, but also to States parties, which had to realize that just talking about economic rights was not enough, and that they also had to provide the Committee with the resources it needed to carry out its work more efficiently.

16. Therefore, he suggested that the Committee should adopt a resolution at its current session expressing briefly and resolutely the need for more resources to be made available. He suggested that Mr. Badawi should be asked to prepare such a draft resolution.

17. It was so decided.

18. Mr. RATTRAY said that it was important clearly to identify the constraints facing the Committee. It had been forced to hold additional sessions to deal with the backlog in the consideration of reports submitted by States parties and had thought it necessary to resort to a Pre-Sessional Working Group responsible for giving detailed prior consideration to reports submitted and for drawing up a list of issues on which Governments should provide additional information which the Committee would, henceforth, prefer to receive in writing. Mr. Grissa had suggested that the experts should form subcommittees during ordinary sessions of the Committee to look at the reports and draw up lists of issues, but it was unlikely that members of the Committee would find the time needed to do that, given their already heavy schedule. If the Committee was to opt for the Working Group solution, it would still have to decide on the most suitable time for the Group's meetings. The solutions which had been proposed hinged on costs, namely the savings on travel expenses that could be made by holding the meeting of the Working Group immediately before or after the Committee's session, and on whether participation was possible, given that an absence of four weeks was apparently out of the question for some experts. In view of the complexity of the issue, he suggested, as other experts had done before him, that the 1994 timetable which

had been drawn up by the United Nations Committee on Conferences should be respected and that the Committee should revert to the question of its working methods at a later date.

19. The CHAIRPERSON noted that the Committee on Conferences drew up the calendar of meetings one year in advance and that, if the experts had any requests for 1995, they should make them at the current session.

20. Mrs. BONOAN-DANDAN said that she thought the experts might have as much difficulty in keeping four weeks free as in returning to Geneva for a meeting of the Working Group. In view of the cost factor, the Working Group's meeting and the Committee's session should be consecutive. The best solution would be for the Working Group to meet immediately before the Committee's session as from 1995. She wondered whether there would be enough time for States parties to provide additional information in writing and for the Secretariat to translate it if the Working Group were to submit the list of issues one week after the Committee's session for consideration at the following session.

21. The CHAIRPERSON said that that argument carried even more weight in that the Committee would doubtless have to regularly hold two sessions every year to be able to consider all the reports submitted to it. He asked the experts if they were prepared to accept the proposal to hold the Working Group's meeting one week before the Committee's session as from 1995.

22. Mr. WIMER ZAMBRANO said he would like the experts to be consulted beforehand to see if they were available in view of their family and professional commitments and even, in some cases, the distance between Switzerland and their country of origin.

23. The CHAIRPERSON said he was prepared to consult members before the end of the session but feared it might be difficult for members to take on additional commitments for 1995 at the current stage.

24. Mr. CEAUSU wondered whether it would not be possible to circumvent that difficulty by appointing alternates.

25. The CHAIRPERSON expressed the view that the system of alternates was not necessarily viable because there was no guarantee that an expert could come at the last minute to replace someone else. Thus far, there had always been enough members to make up working groups, and it was better to leave it to the Secretariat to find replacements when a member could not attend. He took it that the members had no further comments to make and agreed that a decision on the issue under discussion would be taken at the final or penultimate meeting of the current session.

Preparation of an optional protocol to the International Covenant on Economic, Social and Cultural Rights

26. The CHAIRPERSON recalled that the World Conference on Human Rights held at Vienna in June 1993 had invited the Committee to continue to work jointly with the Commission on Human Rights in preparing an optional protocol to the International Covenant on Economic, Social and Cultural Rights. The Committee now had to establish the procedures to enable it to pursue that task.

27. Ms. TAYA said the participants in the Vienna Conference had agreed to consider the right to development as a human right. Lying at the very core of that right were the essential needs of the human being, and the States parties to the International Covenant on Economic, Social and Cultural Rights had a fundamental obligation to satisfy those needs. She considered that it was the Committee's duty to promote the right to development by drawing up an optional protocol. Specifically, the communications from individuals that would be received by the monitoring body under such a protocol would enable it to be apprised of flagrant and massive violations of those rights which must be respected if the essential needs of the human being were to be satisfied. They would also indirectly enable measures to be determined that would then be taken at the national and international levels so as to protect those rights better. For example, the Committee might be able to find sufficient reason to recommend that the World Bank or the International Monetary Fund (IMF) should include among the conditions to which structural adjustment loans were subject the obligation to distribute ownership of agricultural land more equitably. She also thought that in the absence of drafting an optional protocol the Committee should invite the World Bank and the IMF to indicate their views on the implementation of structural adjustment policy.

28. Mr. SIMMA wondered how it had been possible for the participants in the Vienna Conference to invite the Committee to draw up an optional protocol when a large number of countries had rejected the very idea of it. In any event, the idea had originated with the Committee, and it was important for it to remain the driving force behind the drawing up of an optional protocol to the Covenant. The Committee might request Mr. Alston to resume the study he had made of the matter in order to develop it and submit a revised version to the Committee at its May 1994 session. There would be a number of concepts to be defined at that stage: if such an optional protocol were to cover the right to development, as Ms. Taya had just suggested, a decision would have to be taken as to who would be able to submit communications and who would be covered by those communications. The individual dimension of the right to development having been recognized by the participants in the Vienna Conference, communications might come from an individual and be directed against, among others, the Government of the country of which the author was a citizen. Furthermore, he wondered whether the Committee should not take the opportunity of the drafting of such a protocol to claim a role in monitoring the application of the right to development. Those were questions which it would be interesting to consider jointly with the Working Group on the Right to Development established by the Commission on Human Rights.

29. Mr. TEXIER inquired what the World Conference on Human Rights expected of the Committee at the present stage. Was it supposed to be marshalling arguments in favour of drawing up an optional protocol or should it be beginning to draft the text of one? If the latter, efforts should be made to find out if projects existed, from whatever source, that might provide a starting-point, since several United Nations bodies, including the International Law Commission, as well as academic circles, had already taken an interest in the matter. To sum up, it would not be very difficult to draft a text based on the model of the protocol on civil and political rights, which amounted to rules of procedure concerning the admissibility and consideration

of communications. The drafting procedures should also be determined, and possibly a drafting committee set up. He would like the Chairperson to brief the Committee on the situation.

30. The CHAIRPERSON said that, in his view, the Committee would be embarking on preparatory work, in other words developing the arguments for and against drawing up a protocol and studying in greater detail the question of guarantees that could be given to Governments to protect them against any undue effects of the monitoring body's findings. There was no doubt that many countries and individuals had the feeling that the two covenants would never be of equal value while the International Covenant on Economic, Social and Cultural Rights was not backed up by a complaints procedure. That was presumably why the participants in the Vienna Conference had in principle supported the idea of drawing up an optional protocol to that Covenant, but even so the Committee should not disregard the serious concern expressed by certain Governments regarding the practical application of such an instrument, which might well be excessively costly for them. As for possible sources, he noted that a Netherlands human rights institute was planning to organize an open-ended conference to study the matter in early 1995. Lastly, he said he was prepared to resume the study he had made in order to offer the Commission on Human Rights a firmer starting-point for considering the question, as well as to explore specific procedural issues for the benefit of the Committee.

31. Mr. RATTRAY recalled that the Chairperson had presented a detailed study on drawing up an optional protocol, which had been reproduced in annex IV to the Committee's report on its seventh session (E/1993/22) and which contained a detailed analysis of the main arguments in favour of preparing such a protocol as well as a description of its possible content.

32. Whether or not Governments approved the idea of drawing up a protocol, the Committee must in due time present the Economic and Social Council with a draft protocol and recommend that it should be sent to States parties for their comments before finalizing the text, which could then be opened for signature by States under some appropriate procedure.

33. He considered that the Committee had made great progress towards drawing up the protocol, and that its Chairperson, Mr. Alston, was the obvious person to continue the work which he had begun.

34. The CHAIRPERSON invited the members of the Committee to raise any objections they might have to the procedure proposed by Mr. Rattray.

35. Mr. ALVAREZ VITA said he was very satisfied with the progress that had been made towards drawing up the optional protocol, and proposed submitting to the Chairperson the text of a draft he had prepared some years before.

36. The CHAIRPERSON agreed to consider Mr. Alvarez Vita's draft, and said that if there were no objections he would take it that the Committee had decided to proceed to draw up the protocol as indicated.

37. It was so decided.

Letters to be addressed to Panama and the Dominican Republic

38. Mr. SIMMA pointed out that a non-governmental organization (NGO) working in Panama had just drawn his attention to the fact that it had received recent information pointing to a marked deterioration in the situation in that country in the area of housing. In his opinion it would be better for the Committee to be apprised of that information before drafting a letter to Panama.

39. The CHAIRPERSON accepted Mr. Simma's proposal and recalled that the Committee had requested Panama and the Dominican Republic to consider inviting some of its members to make a visit. Since there was still no reply to those requests, he gave a brief account of the measures the Committee could take, namely repeating its previous conclusions or discontinuing consideration of the question; informing the Commission on Human Rights or the Economic and Social Council, stating that it had exhausted the means at its disposal; inviting the Governments in question to appear before the Economic and Social Council at its next session; and requesting the Secretariat to collect all available information on the matter with a view to adopting final comments at the Committee's next session.

40. Mrs. BONOAN-DANDAN thought it would be better to invite the Governments concerned to send representatives to appear before the Committee, failing which the Committee should make final comments on the basis of the most recent information at its disposal. In any event, she believed it was necessary to provide an honourable way out not only for the Governments concerned but also for the Committee, whose standing with States parties must be enhanced.

41. The CHAIRPERSON said it was his understanding that Mrs. Bonoan-Dandan was endorsing the proposal to invite Governments to appear before the Committee and to collect information with a view to the possible formulation of final comments.

42. Mr. SIMMA approved that proposal and recommended that a letter should be sent to each of the two Governments concerned indicating the measures which the Committee planned to take if it received no reply.

43. Mr. GRISSA felt that the Committee could not, without creating an unfortunate precedent, base itself on information provided by one NGO without having examined the reports of the States concerned. In his opinion, the Committee should press the States in question to submit a report to it, on the basis of which it would embark on a dialogue with them on the manner in which they were fulfilling their obligations under the Covenant. Information from NGOs could only be of an indicative and complementary nature, and it was not for the Committee to set itself up as a tribunal.

44. Mr. TEXIER outlined the history of the relations between the Committee and Panama and the Dominican Republic, recalling that the Committee had examined the report of the Dominican Republic at its fifth session and, following that, had requested the Government of Panama to send it a supplementary report to clarify, in particular, a number of questions relating to evictions which had affected an entire district of the capital. The report of Panama had been considered by the Committee at its seventh session, and the

country had not replied to the questions which had been addressed to it. The Committee therefore had no alternative but to request the countries concerned to send representatives to its tenth session, failing which the envisaged procedure must be implemented.

45. He thought that as a general rule it would be very useful for members of the Committee to be able to visit the countries concerned at their invitation in order to gather information.

46. Mr. ALVAREZ VITA said he did not think that the file should be referred to the Commission on Human Rights but to the Economic and Social Council, which was the competent higher authority. He considered that the matter was extremely important in view of its connection with the envisaged draft optional protocol, because it was the kind of question that would give rise to complaints which required measures to be taken. Nevertheless, he pointed out that since the discussion was based on information from an NGO of which the Committee had not yet taken cognizance, the Committee should act extremely cautiously. In addition, continuing efforts should be made to encourage NGOs interested in questions other than housing - for example, educational freedom, which was under threat in many countries - to participate in the Committee's work.

47. The CHAIRPERSON asked if he might take it that the Committee wished to invite Panama and the Dominican Republic to attend its tenth session, and to request the Secretariat to collect all relevant information for that session.

48. It was so decided.

49. The CHAIRPERSON invited the Committee to continue its discussion of the other issues raised by Mr. Simma and Mr. Alvarez Vita.

50. Mr. SIMMA gave details of the circumstances in which he had received information to the effect that the situation in the housing sector in Panama was worsening. If the information was shown to be well-founded and useful, it could be mentioned in the letter which the Committee was planning to send to the Government of Panama. Of course, there would be no question of judging the Government concerned on the basis of the information in question.

51. The CHAIRPERSON recalled that the Committee's practice was to take into consideration information from NGOs and the media in addition to the information provided by Governments. Nevertheless, the Committee carefully evaluated the quality and reliability of that information before making any representations to a State party.

52. Mr. ALVAREZ VITA said it was essential for the Committee to urge Governments to present it with the desired information. If they failed to respond, the Committee should take into consideration information provided by NGOs. He was of the opinion that the letter addressed to the Government of Panama should mention the involvement of the NGO in question.

53. The CHAIRPERSON said he would shortly submit a draft letter to the Committee.

Draft reply to the letter from the Permanent Mission of Canada (M/E/C.12/1993/19)

54. The CHAIRPERSON invited members to consider the draft reply to the note verbale of the Permanent Mission of Canada which he had drawn up (M/E/C.12/1993/19, no document symbol in English). The Committee would recall that the Permanent Mission of Canada had protested, among other things, at the fact that lengthy extracts from the concluding observations regarding consideration of the periodic report of Canada had been quoted in the press, and that a member of the Committee had been able to comment on the observations in detail before the Government of Canada had officially received them. It was for that reason that he had sought to point out in the draft letter that the Committee's concluding observations entered the public domain as soon as the document had been officially adopted by members, and that the procedure could be faulted only for the unintended delay in transmitting the text of the observations to the Permanent Mission of Canada, which should have been done on the day they had been adopted.

55. Mr. GRISSA requested that in his reply the Chairperson should add that members of the Committee had the right to express themselves freely regarding concluding observations without in any way being open to the accusation of interfering in a country's internal affairs.

56. The CHAIRPERSON underlined the fact that the Permanent Mission of Canada had not taken exception to the content of the remarks made by the Committee member concerned, on which it had made no comment. Having said that, he would add a sentence to explain that the Committee considered that its members had a right to speak on any subject outside the United Nations.

57. Mr. ALVAREZ VITA endorsed that suggestion. In addition, he considered that in the fourth paragraph it would be better to avoid saying that the information provided by the Centre for Human Rights was inaccurate, and to find a more diplomatic form of words. In the same paragraph the Chairperson undertook somehow to transmit concluding observations to the Permanent Mission of the country concerned by fax; however, not all countries had Permanent Missions.

58. Mr. SIMMA, stating that it was he who, in his personal capacity, had given an interview to the Canadian media, underlined that he had simply explained the nature and role of the Committee and outlined the procedure followed for all countries, while stressing that Canada had not been singled out.

59. He emphasized that, speaking in their individual capacities and not on behalf of the Committee, members had the right to talk to whomever they wished. As for Mr. Grissa's suggestion, it was quite obvious that no statement regarding human rights could be considered as interference in the internal affairs of a State if that State had ratified the Covenant and had thereby voluntarily submitted to the procedure of monitoring its implementation. He was certain that Canada would be the last country to regard a statement relating to human rights as interference in its internal affairs, and it would therefore be superfluous to refer to that in the letter.

60. The CHAIRPERSON agreed that it was pointless to enter into such considerations, but suggested that the opportunity should be taken to affirm the right of Committee members to express their views as individuals on matters discussed within the Committee. He therefore suggested adding a sentence along the following lines: "The Committee considers that its members are free, and indeed are encouraged, to explain the nature and content of its work to media and other interested parties, and notes that the provision of such information cannot in any way be considered inappropriate."

61. In addition, and in order to take account of Mr. Alvarez Vita's objection, the first sentence could be amended to indicate that the information provided "did not reflect the approach of the Committee".

62. The proposed amendments were adopted.

63. The draft reply to the letter of the Permanent Mission of Canada (M/E/C.12/1993/19), as orally amended, was adopted.

Organization of a seminar of experts on the role of the World Bank in the realization of economic, social and cultural rights

64. The CHAIRPERSON informed the Committee that he had been informed of a letter addressed to the Assistant Secretary-General for Human Rights by the World Bank, stating that it was prepared to study the question of organizing a seminar of experts on its own role in the realization of economic, social and cultural rights. The World Bank underlined the close link which existed between the struggle it was waging against poverty in the developing countries and the exercise of economic, social and cultural rights. The Committee should take the opportunity to confirm officially to the World Bank the proposal of the Commission on Human Rights to organize the seminar and to inform the Bank that it intended to play an active part it.

Choice of topic for the next general discussion

65. The CHAIRPERSON then asked members to turn their attention to the choice of a topic for the next general discussion. Given that more and more frequently the Committee was coming up against the difficult question of whether it could require States parties to adopt social measures to protect the most vulnerable segments of the population against the negative effects of structural adjustment policies, he suggested that the next general discussion should be on a topic such as the following: "Measures such as putting in place social safety nets as a means of protecting economic, social and cultural rights in the context of the market economy, the growing liberalization of international trade, capital markets and the free movement of persons." That was an extremely complex question, and the Committee was probably the only United Nations body to be vested with some authority to call for the establishment of social safety nets of that kind. If his suggestion was accepted, it would be desirable for the World Bank to be represented on the day the discussion was held, after which the Committee could draw up a declaration which had some force.

66. Mr. MARCHAN ROMERO said he supported the Chairperson's suggestion all the more strongly in that the Committee had recently had numerous occasions to note the great differences that existed between the expressed desire of States parties to apply the letter and spirit of the Covenant and the harmful consequences for the population of structural adjustment measures. It was important to establish a dialogue with the international credit institutions such as the World Bank and the IMF, because it was undeniable that for the time being countries in transition found themselves facing a cruel dilemma to which there was no easy solution.

67. Mrs. IDER also supported the suggestion and felt that the discussion would be more fruitful if the Committee had before it an exhaustive analytical report on all the difficulties which the developing countries, and also the developed countries and especially the countries in transition, were currently experiencing. The report could be drawn up by a Committee member or by the Secretariat.

68. Mr. SIMMA said he also favoured the suggestion. However, he stressed that the question was as vast as it was complex, and that Committee members would no doubt require documentation before being able to give it serious consideration. He did not think that a Committee member would be in a position to draw up a report on the matter, but the Secretariat might gather together some documents and send them to all Committee members long enough in advance of the session for them to be able to prepare themselves.

69. Mr. GRISSA said that care should be taken not to associate structural adjustment programmes systematically with the World Bank or the IMF. There was not a country, whether or not a member of the World Bank, which was not now implementing structural adjustment measures, and even if the World Bank and the IMF did not exist, that would still be the case. The international financial organizations must not be labelled as being solely responsible.

70. The CHAIRPERSON said that the general debate would centre on the establishment of social security nets. If there were no objections, he would take it that the Committee accepted that topic as the subject of its next general discussion.

71. It was so decided.

The meeting rose at 6 p.m.